

**Andover Conservation Commission Meeting Minutes
November 15, 2011**

Town of Andover
36 Bartlett Street
3rd Floor Conference Room
7:45pm

Conservation Commission Members in Attendance:

Vice Chairman Michael Walsh, Commissioner Fran Fink, Commissioner Alix Driscoll, Commissioner Jon Honea, Commissioner Floyd Greenwood and Commissioner Kevin Porter. Staff Members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

SCHEDULED ITEMS:

98 Lovejoy Road

Present in Interest: Kimberly and Scott Johnson

Staff Recommendation: Approve as Neg. 3 with conditions.

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed removal of trees within the property line and replace with grass, shrubs and small trees for added privacy/aesthetics is subject to the Massachusetts Wetlands Protection Act.

Agent Cleary presented this to the Commission. This filing is under the WPA only, as the house predates the by-law. There is a request for a waiver for the professionally engineered plan and this should be voted first. The Applicant would like to remove about 20 trees within a 4 to 6 foot area that are either leaning towards the house or leaning on the house. The Applicant has paid for the lot line close to the wetland to be professionally surveyed and the survey stakes are visible on site. The project complies with our setbacks and is a "Backyard Project". The property is located within the Fish Brook Watershed Overlay Protection District. The Applicants have agreed to leave the survey stakes in place for the duration of the project. The stakes are located 40 feet from the wetland and erosion control and non-disturb bounds will be placed 10 feet upgradient of the survey stakes. No work will occur within the 50 foot non-disturb area. Commissioner Fink asked the Applicant to confirm the number of trees to be cut. There are roughly 20 trees, with some split at the top, all located outside the 50 foot non-disturb area to be cut. Grass will be planted in the 4-6 foot area to be cleared.

Agent Cleary directed the Commission's attention to Finding No. 5 which states ".....Proposed clearing shall be no closer than 10 feet upgradient of the staked survey markers. Trimming of limbs and removal of dead trees beyond the 50 foot permanent buffer strip shall be done by using hand held equipment. There shall be no removal of stumps within the 50 foot permanent buffer

strip.” Finding No. 7 “There shall be no use of pesticides, herbicides or fertilizers within 50 feet of the non-disturb markers.”, was also brought to the Commission’s attention.

Vice Chairman Walsh asked for a Motion. Commissioner Honea made a Motion to Approve the waiver request for an engineered plan, it was seconded by Commissioner Driscoll and unanimously approved.

Commissioner Driscoll made a Motion to Approve as Neg. 3 with noted conditions 3, 4, 5, 6, 7 and 9, it was seconded by Commissioner Greenwood and unanimously approved.

3 Barbara Lane

Staff Recommendation: Continue to December 15, 2011.

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed installation of siltation control in work area with 100’ of 12’ double wall smooth lined culvert pipe, back fill to existing grades on both sides of the swale is subject to the Massachusetts Wetlands Protection Act.

Agent Cleary presented this to the Commission. The applicant has requested a continuance to December 15, 2011 for staff and Town Engineer to view drainage swale that is proposed to be piped and filled. There may be underground utilities which need to be verified.

Vice Chairman Walsh asked for a Motion. Commissioner Driscoll made a Motion to continue to December 15, 2011, it was seconded by Commissioner Greenwood and unanimously approved.

197 Andover Street

Present in Interest: Bill MacLeod, Shane Marrion, and Joanna Reck

Staff Recommendation: Continue to December 15, 2011.

Continued Public Hearing on the Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law for the proposed construction of a six space parking lot and renovation of an existing driveway.

Mr. Douglas presented this to the Commission. This was continued from November 1, 2011 for purposes of providing flood evaluation, depicting boulders for snow removal, details on design standards such as water quality, pretreatment, soils testing data and perk rates, runoff calculations for the house, and alternative analysis under the Riverfront Act. The Applicant has provided the additional information requested, but it is still unclear if the project meets the requirements of the Rivers Act. DEP has issued their concerns regarding reducing the parking lot size, preserving the existing ground cover and stating the Applicant must meet the stormwater standards fully with the increased impervious area.

Mr. MacLeod presented the revised plan to the Commission which showed a reduced parking area from 6 spaces to 4 spaces. By reducing the parking spaces, the Applicant will now need to obtain a Special Permit from the Planning Board. The planting plan has been provided as well as the boulders to be placed for snow removal have been added to the plan. The area before the

infiltration trench has been expanded to 25 feet per DEP regulations. There was some discussion regarding constructing an infiltration basin to meet stormwater standards, but this would require extensive work within the buffer. The applicant would prefer to stay with the infiltration trench for this reason. The water table is at 24 inches, as shown from the soil testing. The bottom of the infiltration trench will set at the water table. The Applicant would also like to deed a 20 foot strip of land along the Shawsheen River to the Conservation Commission. The Applicant is also requesting a waiver from setback requirements for the parking lot, which is only 39 feet from the resource area and should be 50 feet. All work will be done outside the 100 year flood elevation. As an alternatives analysis, the Applicant did contact 2 abutters to inquire about renting parking spaces and neither were interested in long term rentals of spaces for parking. Commissioner Honea questioned which plan the DEP reviewed. They reviewed the original plan submitted and the plan represented at the meeting was revised per DEP recommendations. Mr. MacLeod reminded the Commission that the regulations provide for the Conservation Commission to grant permits for projects that do not fully meet the guidelines. Commissioner Greenwood asked what condition the 20 foot strip of land to be donated to the Commission was in. It is a wooded and lawned area which will be revegetated with the planting plan provided. Commissioner Greenwood asked if the Applicant would consider erecting a fence along the strip to mark the change in ownership and the Applicant agreed. Commissioner Driscoll stated that there must be adequate protection for the River and any work must be at a minimum of 100 feet from the River. The Commission should not make the conditions on the lot worse than they are.

Ballardvale Preservation Group was represented by Joanna Reck at the meeting. The Group supports the restoration of the house as a commercial property. Historically this meets their guidelines and fits with the commercially zoned area as long as the parking is in the back of the house. The house has been abandoned and vacant for about 10 years and they whole heartedly support the project. This is not a good residential location due to the closeness of the train tracks, a commercial project is the only viable option for this lot.

Commissioner Fink stated that the Riverfront protection and stormwater management are still problems. 1) The soils test show the water table at 24" and the infiltration trench at 24" when per regulations there should be 2 feet of separation from the bottom of the infiltration trench to the water table; the infiltration trench may not do the treatment job needed; 2) There are no perk tests or infiltration rates provided; 3) Riverfront setback of 100 feet not met or the by-law setback.

Commissioner Fink also questioned if the 20 foot strip of land is donated to the Commission, does the lot still meet the minimum area for the zoning requirement. There is no minimum lot size in the zoning area the lot is located in.

Commissioner Driscoll inquired about which FEMA map was used as the new FEMA maps are out. Mr. MacLeod stated the 1989 FEMA maps were used because the new maps have not been accepted yet.

Mr. Douglas did visit the site, both by land and water, and saw the parking area is very small, but the project is doable without hurting the resource area.

Commissioner Honea while approves of the new plan submitted with the changes and accommodations, is still concerned with the infiltration and depth of the water table.

Mr. MacLeod agreed that the top of the infiltration trench will be sitting at the water table, but there was 2 feet of wall space to be filled. By doing this, the lot meets “performance standards met to the furthest extent feasible”. The lot location and shape prevents the Applicant from meeting all the regulations.

Commissioner Porter questioned if the Commission was bound by the state regulations, especially the language, “.....no significant adverse impact on the area..”.

Commissioner Fink asked Mr. MacLeod to provide the calculations for the infiltration trench and the infiltration basin so she can compare the two.

The Commission will conduct a site visit November 22, 2011 at 7:00am.

Vice Chairman Walsh asked for a Motion. Commissioner Porter made a Motion to continue to December 15, 2011, it was seconded by Commissioner Greenwood.

0 and 303 Lowell Street

Present in Interest: Mark Johnson, Maureen Hanley, Ray Cormier, Jr., Sean Smith, Alexis Alicea, Tracie Fuentes, Tammy Kessel, Scott Johnson, Shawn Burgen, Steve Chistycecas and Kin Ho

Staff Recommendation: Continue and recommend an independent Peer Review

Public Hearing on an Abbreviated Notice of Resource Area Delineation filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law to determine the accuracy of the bordering vegetated wetland.

Mr. Douglas presented this to the Commission. The project consists of a very large parcel of land, 49.7 acres, which contains forest, river, wetland a golf course and disturbed lands. The delineation was extensive due to the extreme size of the adjacent wetlands and nature of the project. The By-Law fee of \$18,700 has not been paid and the Applicant refuses to pay as they claim it is for a 40B project. Staff maintains that the ANRAD is a separate filing from the future NOI and is not exempt from our bylaw.

Mark Johnson addressed the by-law issue, stating the request for delineation was filed ONLY under the WPA, not under the by-law as it is not mandatory to file under both, the Applicant can choose which to file under. The Conservation Commission maintains jurisdiction only under the WPA for a 40B, not under the By-law. The Zoning Board of Appeals will enforce the By-Law. Commissioner Fink believes the resource areas will need to be defined under the By-Law at some point during the project. The Zoning Board of Appeals is reviewing the 40B project now. The Applicant can ask the ZBA to waive by-law requirements they cannot meet and still have the project be affordable. The ZBA will need to know how this proposal meets the by-law regulations, so a delineation under both the WPA and By-Law will be necessary if waivers are to be granted for by-law regulations.

Commissioner Driscoll, who has attended the ZBA hearings for the project, stated that waivers will be requested for the 50 foot watershed setback, 75 foot vernal pool setback and 25 foot setback. Buildings are to be moved, but cannot be done without knowing where the wetlands are located. When asked about the location or possibility of vernal pools on the lot or on adjacent lots, both Maureen Hanley and Mark Johnson stated they did not know of any vernal pools.

Commissioner Greenwood questioned how the Commission could listen to the project proposal without knowing in which capacity they are to act or knowing their function?

Maureen Hanley presented the plan and project to the Commission. During the delineation and site visit, at least 12 flags were revised or added and the Riverfront Area as determined to be higher than shown. There are 2 man made basins that were made for the golf course that do not meet the pond requirements or land under water bodies or bordering vegetated wetlands. The Commission is being asked only to confirm the BVW, bordering land subject to flooding and bank to Fish Brook.

Commissioner Fink questioned the existence of a perennial stream or intermittent stream.

Mr. Douglas asked if the 2 basins are connected to the wetland. They are not.

Commissioner Fink was also at the site visit and delineation. There is a visible pipe at Flag 55E and a culvert with earth on top so the golf carts could drive over it. The 120 foot contour is low and a swale is visible at the lower end of the swale there is a length of perforated pipe that disappears underground. She believes there may be a stone trench underground to drain the ponds. The wetland has deep water like a pond. There is also a pipe coming from the apartment complex draining onto the property.

Commissioner Porter has seen drainage ditches and piping near the north basin to help drain the golf course.

Commissioner Greenwood suggested a site visit by the Commission to see the basins and any piping that may be in question.

Commissioner Fink also believes at Flag 82E the wetland may continue along the contour by Route 93, which would throw more buffer if the wetland went further south. There is also a well defined channel near Flags 3A/2B flowing parallel to the wetland with a bank and continues to Greenwood Road and into a pipe and flows towards Fish Brook. At Flags 19 and 20A there is a catch basin and headwall with a stream channel flowing into the channel previously mentioned above. Is this an intermittent or perennial stream? Commissioner Fink would like to look at any possible drainage pipes on the property.

Maureen Hanley stated there are not intermittent or perennial streams and that the engineer used surface topography in preparing the plan.

Sean Smith, an abutter, asked about the impact of the construction at the IRS and how that would impact the runoff onto this property and if the construction would have to be completed before the runoff could be determined.

Shawn Burgen, an abutter, asked the difference between the WPA and our By-Law, since the delineation was filed only under the WPA. The WPA are state regulations and the By-Law are local regulations. The By-Law is stricter than the state laws.

Alexis Alicea, an abutter, has seen and taken video footage, of the 2 basins connecting during a flood by a constant flow. The water runs from the Windsor Green to the ponds. Vice Chairman Walsh asked if he had still pictures to submit them to staff.

The Commission scheduled a site visit for November 22, 2011 at 8:00am.

Vice Chairman Walsh asked for a Motion. Commissioner Greenwood made a Motion to continue to December 15, 2011, it was seconded by Commissioner Honea and unanimously approved.

18 River Road

Staff Recommendation: Continue to December 15, 2011.

Continued Public Hearing on an Abbreviated Notice of Resource Area Delineation filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law to determine the accuracy of the bordering vegetated wetland.

Mr. Douglas presented this to the Commission. Continued from November 1, 2011 meeting, Applicant requested to continue to December 15, 2011.

Vice Chairman Walsh asked for a Motion. Commissioner Greenwood made a Motion to continue to December 15, 2011, it was seconded by Commissioner Porter and unanimously approved.

ACTION ITEMS:

2 Porter Road Lot 1 & 2

Staff Recommendation: Issue Order of Conditions

Issuance of Order of Conditions. Language regarding separation of infiltrators 2 feet from the ground water has been added as discussed.

Commissioner Fink added language that no earth disturbing or tree cutting shall occur and a minimum of 6 inches of topsoil be added.

Commissioner Porter made a Motion to issue the Order of Conditions as amended, it was seconded by Commissioner Driscoll and unanimously approved.

221 Highland Road

Staff Recommendation: Approve extension and fines

Extension for Enforcement Order for unauthorized clearing proximate and/or in a bordering vegetated wetland. Staff recommends an extension to December 27, 2011 for work to be completed and plan submitted. The debris to be removed under direction of the wetland scientist and then the delineation can be done. Fines of \$200 per day to commence on November 15, 2011 if plan is not received by that deadline. Staff would also like Commissioner Fink to represent the Commission on this site with staff and Seekamp Environmental, the wetland scientist.

Commissioner Porter made a Motion to approve the extension of the Enforcement Order with fines as discussed, it was seconded by Commissioner Driscoll and unanimously approved. Commissioner Driscoll made a Motion to approve Commissioner Fink representing the Commission on this site, it was seconded by Commissioner Honea and unanimously approved.

CONSENT AGENDA:

72 Chandler Road

Issuance of a Certificate of Compliance. To be tabled.

Commissioner Greenwood made a Motion to table, it was seconded by Commissioner Driscoll and unanimously approved.

177 High Plain Road

Issuance of a Satisfactory Completion of Work Certificate.

Commissioner Greenwood made a Motion to Approve, it was seconded by Commissioner Driscoll and unanimously approved.

DISCUSSION ITEMS THAT MAY REQUIRE A VOTE:

Newport Circle Subdivision

Request for Superseding Order of Conditions. Tabled until December 15, 2011.

6 Newport Circle

Request for Superseding Order of Conditions. Tabled until December 15, 2011.

MBTA Information Meeting

Present in Interest: Maleb Al-Khatib, Holly Palmgren

MBTA Information Meeting on Rehabilitation of 2 bridges on the Shawsheen River.

The work will be done under an exemption as the work is being done within the footprint of the existing bridges and the bridges will not be moved. The new bridge will be built on top of the existing bridges to fully support the weight of the trains. Construction will start in June/July 2012 and will take about a year to complete.

Commissioner Greenwood asked exactly what work will take place in the Shawsheen River. The riverbed will be re-enforced and scouring to protect the timbers will take place.

Commissioner Fink asked how they would access the water. Most access will be from the tracks above, or ladders will be secured to the bridges.

Mr. Douglas will set up a site visit with MBTA and let the Commission know the date and time as well as confirm scope of exemption (limited to work in area of existing tracks, machinery, stockpiling, etc.).

Ballardvale Land

Discussion on the Proposal to transfer Ballardvale Land from MBTA. Tabled until December 15, 2011.

6 Starr Avenue East

Vote to accept no filing required for removal of 2 pine trees. Staff reviewed the site and the trees to be removed with written confirmation of which trees to be removed.

Commissioner Driscoll made a Motion of no filing required, it was seconded by Commissioner Greenwood and unanimously approved.

8 Snowberry Road

Issuance of Enforcement Order for excavation of a pipe and catch basin proximate or in a resource area of a Great Pond, Foster's Pond. Staff was called to go on site from a complaint received at Town Offices. A backhoe was found close to the pond and a catch basin in the driveway piped to the wetland.

Commissioner Driscoll made a Motion to Approve, it was seconded by Commissioner Honea and unanimously approved.

Commissioner Porter advised the Commission that letters should be sent to select addresses that abut the stream for the Merrimack College project. He will work with staff.

The next meeting will be held December 15, 2011 at 7:45pm.

The meeting was adjourned at 10:50pm by Motion of Commissioner Honea, seconded by Commissioner Greenwood and unanimously approved.

Respectfully submitted by:

**Lynn Viselli,
Recording Secretary**